



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Far East Center Associates Limited Partnership

**File:** B-239007

**Date:** April 13, 1990

Grant L. Clark, Esq., Rivkin, Radler, Dunne & Bayh, for the protester.

Raymond A. Ritchey, for Southwest Market Limited Partnership; Timothy C. Hutchens, Esq., Melrod, Redman & Gartlan, for Peter N.G. Schwartz Companies Judiciary Square Limited Partnership; and L. Graeme Bell III, Esq., Crowell & Moring, for Square 537 Associates, interested parties.  
Gary F. Davis, Esq., Office of the General Counsel, General Services Administration, for the agency.  
Paula A. Williams, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that it is impossible for any offeror to meet the delivery schedules and tax assessment-related rent adjustment provisions in a solicitation for offers for the lease of office space is untimely when filed after protester's best and final offer was rejected for failing to comply with these provisions.

### DECISION

Far East Center Associates Limited Partnership (FEC) protests the General Services Administration's (GSA) elimination of its proposal from the competitive range and the award of a contract under solicitation for offers (SFO) No. 89-047, for the lease of up to 504,000 square feet of office and related space within the District of Columbia.

We dismiss the protest.

On March 21, 1990, FEC filed this protest alleging that on March 7, it received notice that its best and final offer (BAFO) had no reasonable chance for award and was therefore eliminated from the competition. FEC advances two specific grounds of protest: first, that the delivery schedules in the SFO are in fact impossible for any offeror to meet and

04828/141133

GSA knew or should have known of this impossibility. Second, that there exists an irreconcilable conflict between the tax assessment-based rent adjustment methodology set forth in the solicitation and the tax assessment methodology of the District of Columbia of which GSA was on notice.

GSA has requested that we dismiss the protest as untimely because the two provisions to which the protester objects were incorporated into the SFO through various amendments. The delivery schedule was first proposed in amendment 1 on April 25, 1989, and again in amendment 8, which was issued on December 7, 1989, and amendment 6, which contains the tax assessment-based rent adjustment provision, was issued on October 26, 1989. Accordingly, FEC submitted an initial and a best and final offer believing the challenged provisions in the SFO were defective and both protested provisions were the subject of many months of negotiations between GSA and the offerors in the competitive range.

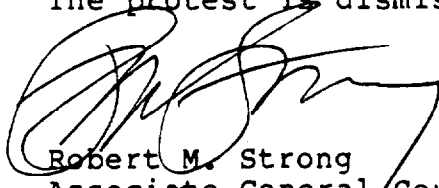
FEC maintains that its protest is timely. With regard to the delivery schedule requirement, the protester alleges that its protest was "promptly lodged" when it learned of its competitors' inability--many of whom it states employ the same general contractor as FEC--to meet these schedules after submission of BAFOs. As to the tax assessment-based rent adjustment provision, FEC asserts that it reasonably assumed that GSA would interpret this provision so as to comply with the requirement of the District of Columbia but became aware of GSA's unreasonable interpretation after its BAFO was rejected.

Our Bid Protest Regulations provide that a protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1989). Alleged improprieties, such as those involved here, which do not exist in the solicitation as issued initially, but which are subsequently incorporated into the solicitation by amendment must be protested no later than the next closing date for receipt of proposals following the incorporation. Id. Helitune Inc., B-235527, June 23, 1989, 89-1 CPD ¶ 598. Since FEC filed its protest after February 12, 1990, the closing date for receipt of BAFOs, its protest is untimely and not for consideration on the merits.

Alternatively, FEC asserts that "significant issues of procurement policy" warrant our consideration of the merits of the protest under the exception in our timeliness rules.

See 4 C.F.R. § 21.2(b). We invoke this exception to our timeliness rules only if the subject of the protest concerns a matter of widespread interest to the procurement community or involves a matter that has not been considered on the merits in a prior decision. The protest of FEC does not fall within this exception. See 120 Church Street Assocs., B-232139.3, Mar. 7, 1989, 89-1 CPD ¶ 246; aff'd on reconsideration, May 23, 1989, 89-1 CPD ¶ 490 (dismissal of untimely protest of alleged deficiencies in an SFO, including building occupancy requirement).

The protest is dismissed.



Robert M. Strong  
Associate General Counsel